

FIRST REGULAR SESSION

SENATE BILL NO. 594

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Read 1st time February 26, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2411S.011

AN ACT

To repeal sections 105.961, 105.963, and 130.057, RSMo, and to enact in lieu thereof three new sections relating to ethics, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 105.961, 105.963, and 130.057, RSMo, are repealed

2 and three new sections enacted in lieu thereof, to be known as sections 105.961,
3 105.963, and 130.057, to read as follows:

105.961. 1. Upon receipt of a complaint as described by section 105.957,
2 the commission shall assign the complaint to a special investigator, who may be
3 a commission employee, who shall investigate and determine the merits of the
4 complaint. Within ten days of such assignment, the special investigator shall
5 review such complaint and disclose, in writing, to the commission any conflict of
6 interest which the special investigator has or might have with respect to the
7 investigation and subject thereof. Within one hundred twenty days of receipt of
8 the complaint from the commission, the special investigator shall submit the
9 special investigator's report to the commission. The commission, after review of
10 such report, shall determine:

11 (1) That there is reasonable grounds for belief that a violation has
12 occurred; or

13 (2) That there are no reasonable grounds for belief that a violation exists
14 and the complaint should be dismissed; or

15 (3) That additional time is necessary to complete the investigation, and
16 the status and progress of the investigation to date. The commission, in its
17 discretion, may allow the investigation to proceed for additional successive
18 periods of one hundred twenty days each, pending reports regarding the status

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 and progress of the investigation at the end of each such period.

20 2. When the commission concludes, based on the report from the special
21 investigator, or based on an audit conducted pursuant to section 105.959, that
22 there are reasonable grounds to believe that a violation of any criminal law has
23 occurred, and if the commission believes that criminal prosecution would be
24 appropriate upon a vote of four members of the commission, the commission shall
25 refer the report to the Missouri office of prosecution services, prosecutors
26 coordinators training council established in section 56.760, RSMo, which shall
27 submit a panel of five attorneys for recommendation to the court having criminal
28 jurisdiction, for appointment of an attorney to serve as a special prosecutor;
29 except that, the attorney general of Missouri or any assistant attorney general
30 shall not act as such special prosecutor. The court shall then appoint from such
31 panel a special prosecutor pursuant to section 56.110, RSMo, who shall have all
32 the powers provided by section 56.130, RSMo. The court shall allow a reasonable
33 and necessary attorney's fee for the services of the special prosecutor. Such fee
34 shall be assessed as costs if a case is filed, or ordered by the court if no case is
35 filed, and paid together with all other costs in the proceeding by the state, in
36 accordance with rules and regulations promulgated by the state courts
37 administrator, subject to funds appropriated to the office of administration for
38 such purposes. If the commission does not have sufficient funds to pay a special
39 prosecutor, the commission shall refer the case to the prosecutor or prosecutors
40 having criminal jurisdiction. If the prosecutor having criminal jurisdiction is not
41 able to prosecute the case due to a conflict of interest, the court may appoint a
42 special prosecutor, paid from county funds, upon appropriation by the county or
43 the attorney general to investigate and, if appropriate, prosecute the case. The
44 special prosecutor or prosecutor shall commence an action based on the report by
45 the filing of an information or seeking an indictment within sixty days of the date
46 of such prosecutor's appointment, or shall file a written statement with the
47 commission explaining why criminal charges should not be sought. If the special
48 prosecutor or prosecutor fails to take either action required by this subsection,
49 upon request of the commission, a new special prosecutor, who may be the
50 attorney general, shall be appointed. The report may also be referred to the
51 appropriate disciplinary authority over the person who is the subject of the
52 report.

53 3. When the commission concludes, based on the report from the special
54 investigator or based on an audit conducted pursuant to section 105.959, that

55 there are reasonable grounds to believe that a violation of any law has occurred
56 which is not a violation of criminal law or that criminal prosecution is not
57 appropriate, the commission shall conduct a hearing which shall be a closed
58 meeting and not open to the public. The hearing shall be conducted pursuant to
59 the procedures provided by sections 536.063 to 536.090, RSMo, and shall be
60 considered to be a contested case for purposes of such sections. The commission
61 shall determine, in its discretion, whether or not that there is probable cause that
62 a violation has occurred. If the commission determines, by a vote of at least four
63 members of the commission, that probable cause exists that a violation has
64 occurred, the commission may refer its findings and conclusions to the
65 appropriate disciplinary authority over the person who is the subject of the
66 report, as described in subsection 7 of this section. After the commission
67 determines by a vote of at least four members of the commission that probable
68 cause exists that a violation has occurred, and the commission has referred the
69 findings and conclusions to the appropriate disciplinary authority over the person
70 subject of the report, the subject of the report may appeal the determination of
71 the commission to the administrative hearing commission. Such appeal shall stay
72 the action of the Missouri ethics commission. Such appeal shall be filed not later
73 than the fourteenth day after the subject of the commission's action receives
74 [actual] notice of the commission's action.

75 4. If the appropriate disciplinary authority receiving a report from the
76 commission pursuant to subsection 3 of this section fails to follow, within sixty
77 days of the receipt of the report, the recommendations contained in the report, or
78 if the commission determines, by a vote of at least four members of the
79 commission that some action other than referral for criminal prosecution or for
80 action by the appropriate disciplinary authority would be appropriate, the
81 commission shall take any one or more of the following actions:

82 (1) Notify the person to cease and desist violation of any provision of law
83 which the report concludes was violated and that the commission may seek
84 judicial enforcement of its decision pursuant to subsection 5 of this section;

85 (2) Notify the person of the requirement to file, amend or correct any
86 report, statement, or other document or information required by sections 105.473,
87 105.483 to 105.492, or chapter 130, RSMo, and that the commission may seek
88 judicial enforcement of its decision pursuant to subsection 5 of this section; and

89 (3) File the report with the executive director to be maintained as a public
90 document; or

91 (4) Issue a letter of concern or letter of reprimand to the person, which
92 would be maintained as a public document; or

93 (5) Issue a letter that no further action shall be taken, which would be
94 maintained as a public document; or

95 (6) Through reconciliation agreements or civil action, the power to seek
96 fees for violations in an amount not greater than one thousand dollars or double
97 the amount involved in the violation.

98 5. Upon vote of at least four members, the commission may initiate formal
99 judicial proceedings seeking to obtain any of the following orders:

100 (1) Cease and desist violation of any provision of sections 105.450 to
101 105.496, or chapter 130, RSMo, or sections 105.955 to 105.963;

102 (2) Pay any civil penalties required by sections 105.450 to 105.496 or
103 chapter 130, RSMo;

104 (3) File any reports, statements, or other documents or information
105 required by sections 105.450 to 105.496, or chapter 130, RSMo; or

106 (4) Pay restitution for any unjust enrichment the violator obtained as a
107 result of any violation of any criminal statute as described in subsection 6 of this
108 section.

109 The Missouri ethics commission shall give [actual] notice to the subject of the
110 complaint of the proposed action as set out in this section. The subject of the
111 complaint may appeal the action of the Missouri ethics commission, other than
112 a referral for criminal prosecution, to the [administrative hearing commission]
113 **circuit court of Cole County**. Such appeal shall stay the action of the
114 Missouri ethics commission. Such appeal shall be filed no later than fourteen
115 days after the subject of the commission's actions receives actual notice of the
116 commission's actions.

117 6. In the proceeding in circuit court, the commission may seek restitution
118 against any person who has obtained unjust enrichment as a result of violation
119 of any provision of sections 105.450 to 105.496, or chapter 130, RSMo, and may
120 recover on behalf of the state or political subdivision with which the alleged
121 violator is associated, damages in the amount of any unjust enrichment obtained
122 and costs and attorney's fees as ordered by the court.

123 7. The appropriate disciplinary authority to whom a report shall be sent
124 pursuant to subsection 2 or 3 of this section shall include, but not be limited to,
125 the following:

126 (1) In the case of a member of the general assembly, the ethics committee

127 of the house of which the subject of the report is a member;

128 (2) In the case of a person holding an elective office or an appointive office
129 of the state, if the alleged violation is an impeachable offense, the report shall be
130 referred to the ethics committee of the house of representatives;

131 (3) In the case of a person holding an elective office of a political
132 subdivision, the report shall be referred to the governing body of the political
133 subdivision;

134 (4) In the case of any officer or employee of the state or of a political
135 subdivision, the report shall be referred to the person who has immediate
136 supervisory authority over the employment by the state or by the political
137 subdivision of the subject of the report;

138 (5) In the case of a judge of a court of law, the report shall be referred to
139 the commission on retirement, removal and discipline, or if the inquiry involves
140 an employee of the judiciary to the applicable presiding judge;

141 (6) In the case of a person holding an appointive office of the state, if the
142 alleged violation is not an impeachable offense, the report shall be referred to the
143 governor;

144 (7) In the case of a statewide elected official, the report shall be referred
145 to the attorney general;

146 (8) In a case involving the attorney general, the report shall be referred
147 to the prosecuting attorney of Cole County.

148 8. The special investigator having a complaint referred to the special
149 investigator by the commission shall have the following powers:

150 (1) To request and shall be given access to information in the possession
151 of any person or agency which the special investigator deems necessary for the
152 discharge of the special investigator's responsibilities;

153 (2) To examine the records and documents of any person or agency, unless
154 such examination would violate state or federal law providing for confidentiality;

155 (3) To administer oaths and affirmations;

156 (4) Upon refusal by any person to comply with a request for information
157 relevant to an investigation, an investigator may issue a subpoena for any person
158 to appear and give testimony, or for a subpoena duces tecum to produce
159 documentary or other evidence which the investigator deems relevant to a matter
160 under the investigator's inquiry. The subpoenas and subpoenas duces tecum may
161 be enforced by applying to a judge of the circuit court of Cole County or any
162 county where the person or entity that has been subpoenaed resides or may be

163 found, for an order to show cause why the subpoena or subpoena duces tecum
164 should not be enforced. The order and a copy of the application therefor shall be
165 served in the same manner as a summons in a civil action, and if, after hearing,
166 the court determines that the subpoena or subpoena duces tecum should be
167 sustained and enforced, the court shall enforce the subpoena or subpoena duces
168 tecum in the same manner as if it had been issued by the court in a civil action;
169 and

170 (5) To request from the commission such investigative, clerical or other
171 staff assistance or advancement of other expenses which are necessary and
172 convenient for the proper completion of an investigation. Within the limits of
173 appropriations to the commission, the commission may provide such assistance,
174 whether by contract to obtain such assistance or from staff employed by the
175 commission, or may advance such expenses.

176 9. (1) Any retired judge may request in writing to have the judge's name
177 removed from the list of special investigators subject to appointment by the
178 commission or may request to disqualify himself or herself from any
179 investigation. Such request shall include the reasons for seeking removal;

180 (2) By vote of four members of the commission, the commission may
181 disqualify a judge from a particular investigation or may permanently remove the
182 name of any retired judge from the list of special investigators subject to
183 appointment by the commission.

184 10. Any person who is the subject of any investigation pursuant to this
185 section shall be entitled to be represented by counsel at any proceeding before the
186 special investigator or the commission.

187 11. The provisions of sections 105.957, 105.959 and 105.961 are in
188 addition to other provisions of law under which any remedy or right of appeal or
189 objection is provided for any person, or any procedure provided for inquiry or
190 investigation concerning any matter. The provisions of this section shall not be
191 construed to limit or affect any other remedy or right of appeal or objection.

192 12. No person shall be required to make or file a complaint to the
193 commission as a prerequisite for exhausting the person's administrative remedies
194 before pursuing any civil cause of action allowed by law.

195 13. If, in the opinion of the commission, the complaining party was
196 motivated by malice or reason contrary to the spirit of any law on which such
197 complaint was based, in filing the complaint without just cause, this finding shall
198 be reported to appropriate law enforcement authorities. Any person who

199 knowingly files a complaint without just cause, or with malice, is guilty of a class
200 A misdemeanor.

201 14. A respondent party who prevails in a formal judicial action brought
202 by the commission shall be awarded those reasonable fees and expenses incurred
203 by that party in the formal judicial action, unless the court finds that the position
204 of the commission was substantially justified or that special circumstances make
205 such an award unjust.

206 15. The special investigator and members and staff of the commission
207 shall maintain confidentiality with respect to all matters concerning a complaint
208 until and if a report is filed with the commission, with the exception of
209 communications with any person which are necessary to the investigation. The
210 report filed with the commission resulting from a complaint acted upon under the
211 provisions of this section shall not contain the name of the complainant or other
212 person providing information to the investigator, if so requested in writing by the
213 complainant or such other person. Any person who violates the confidentiality
214 requirements imposed by this section or subsection 17 of section 105.955 required
215 to be confidential is guilty of a class A misdemeanor and shall be subject to
216 removal from or termination of employment by the commission.

217 16. Any judge of the court of appeals or circuit court who ceases to hold
218 such office by reason of the judge's retirement and who serves as a special
219 investigator pursuant to this section shall receive annual compensation, salary
220 or retirement for such services at the rates of compensation provided for senior
221 judges by subsections 1, 2 and 4 of section 476.682, RSMo. Such retired judges
222 shall by the tenth day of each month following any month in which the judge
223 provided services pursuant to this section certify to the commission and to the
224 state courts administrator the amount of time engaged in such services by hour
225 or fraction thereof, the dates thereof, and the expenses incurred and allowable
226 pursuant to this section. The commission shall then issue a warrant to the state
227 treasurer for the payment of the salary and expenses to the extent, and within
228 limitations, provided for in this section. The state treasurer upon receipt of such
229 warrant shall pay the same out of any appropriations made for this purpose on
230 the last day of the month during which the warrant was received by the state
231 treasurer.

105.963. 1. The executive director shall assess every committee, as
2 defined in section 130.011, RSMo, failing to file with a filing officer other than a
3 local election authority as provided by section 130.026, RSMo, a campaign

4 disclosure report as required by chapter 130, RSMo, other than the report
5 required pursuant to subdivision (1) of subsection 1 of section 130.046, RSMo, a
6 late filing fee of ten dollars for each day after such report is due to the
7 commission. The executive director shall mail a notice[, by registered mail], to
8 any candidate and the treasurer of any committee who fails to file such report
9 informing such person of such failure and the fees provided by this section. If the
10 candidate or treasurer of any committee persists in such failure for a period in
11 excess of thirty days beyond receipt of such notice, the amount of the late filing
12 fee shall increase to one hundred dollars for each day that the report is not filed,
13 provided that the total amount of such fees assessed pursuant to this subsection
14 per report shall not exceed three thousand dollars.

15 2. (1) Any candidate for state or local office who fails to file a campaign
16 disclosure report required pursuant to subdivision (1) of subsection 1 of section
17 130.046, RSMo, other than a report required to be filed with a local election
18 authority as provided by section 130.026, RSMo, shall be assessed by the
19 executive director a late filing fee of one hundred dollars for each day that the
20 report is not filed, until the first day after the date of the election. After such
21 election date, the amount of such late filing fee shall accrue at the rate of ten
22 dollars per day that such report remains unfiled, except as provided in
23 subdivision (2) of this subsection.

24 (2) The executive director shall mail a notice[, by certified mail or other
25 means to give actual notice,] to any candidate who fails to file the report
26 described in subdivision (1) of this subsection informing such person of such
27 failure and the fees provided by this section. If the candidate persists in such
28 failure for a period in excess of thirty days beyond receipt of such notice, the
29 amount of the late filing fee shall increase to one hundred dollars for each day
30 that the report is not filed, provided that the total amount of such fees assessed
31 pursuant to this subsection per report shall not exceed six thousand dollars.

32 3. The executive director shall assess every person required to file a
33 financial interest statement pursuant to sections 105.483 to 105.492 failing to file
34 such a financial interest statement with the commission a late filing fee of ten
35 dollars for each day after such statement is due to the commission. The executive
36 director shall mail a notice, by certified mail, to any person who fails to file such
37 statement informing the individual required to file of such failure and the fees
38 provided by this section. If the person persists in such failure for a period in
39 excess of thirty days beyond receipt of such notice, the amount of the late filing

40 fee shall increase to one hundred dollars for each day thereafter that the
41 statement is late, provided that the total amount of such fees assessed pursuant
42 to this subsection per statement shall not exceed six thousand dollars.

43 4. Any person assessed a late filing fee may seek review of such
44 assessment or the amount of late filing fees assessed, at the person's option, by
45 filing a petition within fourteen days after receiving [actual] notice of assessment
46 with [the administrative hearing commission, or without exhausting the person's
47 administrative remedies may seek review of such issues with] the circuit court
48 of Cole County.

49 5. The executive director of the Missouri ethics commission shall collect
50 such late filing fees as are provided for in this section. Unpaid late filing fees
51 shall be collected by action filed by the commission. The commission shall
52 contract with the appropriate entity to collect such late filing fees after a
53 thirty-day delinquency. If not collected within one hundred twenty days, the
54 Missouri ethics commission shall file a petition in Cole County circuit court to
55 seek a judgment on said fees. All late filing fees collected pursuant to this section
56 shall be transmitted to the state treasurer and deposited to the general revenue
57 fund.

58 6. The late filing fees provided by this section shall be in addition to any
59 penalty provided by law for violations of sections 105.483 to 105.492 or chapter
60 130, RSMo.

61 7. If any **lobbyist fails to file a lobbyist report in a timely manner**
62 **and that lobbyist is assessed a late fee, or if any individual who is**
63 **required to file a personal financial disclosure statement fails to file**
64 **such disclosure statement in a timely manner and is assessed a late fee,**
65 **or if any candidate and the treasurer of any committee who fails to file a**
66 **campaign disclosure report in a timely manner and that candidate and the**
67 **treasurer of any committee who fails to file such disclosure statement**
68 **in a timely manner and is assessed a late filing fee, the lobbyist, individual,**
69 **candidate[, candidate committee treasurer or assistant treasurer] or the**
70 **treasurer of any committee** may file an appeal of the assessment of the late
71 filing fee with the commission. The commission may forgive the assessment of
72 the late filing fee upon a showing of good cause. Such appeal shall be filed within
73 ten days of the receipt of notice of the assessment of the late filing fee.

130.057. 1. In order for candidates for election and public officials to more
2 easily file reports required by law and to access information contained in such

3 reports, and for the Missouri ethics commission to receive and store reports in an
4 efficient and economical method, and for the general public and news media to
5 access information contained in such reports, the commission shall establish and
6 maintain an electronic reporting system pursuant to this section.

7 2. The ethics commission may establish for elections in 1996 and shall
8 establish for elections and all required reporting beginning in 1998 and maintain
9 thereafter a state campaign finance and financial interest disclosure electronic
10 reporting system pursuant to this section for all candidates required to file. The
11 system may be used for the collection, filing and dissemination of all reports,
12 including monthly lobbying reports filed by law, and all reports filed with the
13 commission pursuant to this chapter and chapter 105, RSMo. The system may
14 be established and used for all reports required to be filed for the primary and
15 general elections in 1996 and all elections thereafter, except that the system may
16 require maintenance of a paper backup system for the primary and general
17 elections in 1996. The reports shall be maintained and secured in the electronic
18 format by the commission.

19 3. When the commission determines that the electronic reporting system
20 has been properly implemented, the commission shall certify to all candidates and
21 committees required to file pursuant to this chapter that such electronic reporting
22 system has been established and implemented. Beginning with the primary and
23 general elections in 2000, or the next primary or general election in which the
24 commission has made certification pursuant to this subsection, whichever is later,
25 candidates and all other committees shall file reports by using either the
26 electronic format prescribed by the commission or paper forms provided by the
27 commission for that purpose. Continuing committees, **political party**
28 **committees, and campaign committees** shall file reports by electronic format
29 prescribed by the commission, except continuing committees, **political party**
30 **committees, and campaign committees** which make contributions equal to
31 or less than [fifteen] **five** thousand dollars in the applicable calendar year. Any
32 continuing [committee which makes] **committees, political party**
33 **committees, or campaign committees which make** contributions in support
34 of or opposition to any measure or candidate equal to or less than [fifteen] **five**
35 thousand dollars in the applicable calendar year shall file reports on paper forms
36 provided by the commission for that purpose or by electronic format prescribed
37 by the commission, whichever reporting method the continuing committee
38 chooses. The commission shall supply a computer program which shall be used

39 for filing by modem or by a common magnetic media chosen by the commission.
40 In the event that filings are performed electronically, the candidate shall file a
41 signed original written copy within five working days; except that, if a means
42 becomes available which will allow a verifiable electronic signature, the
43 commission may also accept this in lieu of a written statement.

44 4. Beginning January 1, 2000, or on the date the commission makes the
45 certification pursuant to subsection 3 of this section, whichever is later, all
46 reports filed with the commission by any candidate for a statewide office, or such
47 candidate's committee, shall be filed in electronic format as prescribed by the
48 commission; provided however, that if a candidate for statewide office, or such
49 candidate's committee receives or spends five thousand dollars or less for any
50 reporting period, the report for that reporting period shall not be required to be
51 filed electronically.

52 5. A copy of all reports filed in the state campaign finance electronic
53 reporting system shall be placed on a public electronic access system so that the
54 general public may have open access to the reports filed pursuant to this
55 section. The access system shall be organized and maintained in such a manner
56 to allow an individual to obtain information concerning all contributions made to
57 or on behalf of, and all expenditures made on behalf of, any public official
58 described in subsection 2 of this section in formats that will include both written
59 and electronically readable formats.

60 6. All records that are in electronic format, not otherwise closed by law,
61 shall be available in electronic format to the public. The commission shall
62 maintain and provide for public inspection, a listing of all reports with a complete
63 description for each field contained on the report, that has been used to extract
64 information from their database files. The commission shall develop a report or
65 reports which contain every field in each database.

66 7. Annually, the commission shall provide, without cost, a system-wide
67 dump of information contained in the commission's electronic database files to the
68 general assembly. The information is to be copied onto a medium specified by the
69 general assembly. Such information shall not contain records otherwise closed
70 by law. It is the intent of the general assembly to provide open access to the
71 commission's records. The commission shall make every reasonable effort to
72 comply with requests for information and shall take a liberal interpretation when
73 considering such requests.

✓